

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 07-0054
Sales and Use Tax
For The Tax Years 2003-2005

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Use Tax – Convenience Cars.

Authority: IC § 6-8.1-5-1(b)(c); IC § 6-2.5-2-1; IC § 6-2.5-3-2(a); IC § 6-2.5-4-10; Sales Tax Information Bulletin #2 (May 2002).

The Taxpayer protests the assessment of use tax on convenience cars it provides to customers who are having their cars repaired pursuant to original factory warranties.

STATEMENT OF FACTS

The Taxpayer is a new car dealer that also offers repair services. Some of the Taxpayer's customers have a car that was purchased new with the original factory warranty. When a customer brings in a car covered by the original factory warranty for repairs, the Taxpayer provides a convenience rental car for the customer's use while the customer's car is being serviced. The Taxpayer did not collect and remit sales tax on these convenience rental cars. The Department assessed the complementary use tax. The Taxpayer protested this assessment. The Taxpayer did not protest the remaining assessments in the audit. A hearing was scheduled. In lieu of participating in the hearing, the Taxpayer requested that the decision be based on the documentation in the file. This Letter of Findings results.

ISSUE

I. Sales and Use Tax – Convenience Cars.

DISCUSSION

Tax assessments are presumed to be accurate. IC § 6-8.1-5-1(b). The Taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c).

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC § 6-2.5-2-1. Indiana imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC § 6-2.5-3-

2(a). The lease of tangible personal property is considered a retail transaction, subject to the sales and use tax. IC § 6-2.5-4-10.

Sales Tax Information Bulletin #2 (May 2002) explains the application of the sales and use tax to tangible personal property transferred pursuant to an original factory warranty as follows:

Original warranties or dealer warranties warranting the condition of a product and providing that maintenance or replacement parts will be provided for either no charge or a flat charge are subject to sales tax. Original warranties and dealer warranties are not offered as an option when the product is sold and are considered part of the selling price of the product. Any parts transferred to a buyer under the terms of original or dealer warranty are not subject to the sales tax because the parts and or property are considered to have been sold with the product as a part of the retail transaction on which sales tax was collected.

The taxpayer submitted documentation indicating that the original factory warranties covered the provision of convenience rental cars for the period when the customer's cars were serviced pursuant to the warranty. Specifically, the Coverage Agreement for the original factory warranty stated on page two as follows:

WE will pay the charge to rent a replacement vehicle . . . up to \$35 per day and a maximum of \$175 per repair visit if the VEHICLE is accepted for repairs or services covered by either YOUR New Vehicle Limited Warranty or this Agreement.

In the Taxpayer's situation, the customers purchased new cars. These cars came with original factory warranties. The price of the warranties was included in the original purchase price of the car. The customers did not have the option of refusing to buy original factory warranties and lowering the price of the car. The Taxpayer collected and remitted sales tax on the total original purchase price of the car. Sales tax was, therefore, collected and remitted on the value of the original factory warranties.

The Taxpayer is correct that the use tax is not due on the value of the convenience rental cars.

FINDING

The Taxpayer's protest is sustained.